

POSSIBLE ABUSE OF THE BUSINESS RESCUE PROCESS



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Property Commission

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ABUSE OF THE BUSINESS RESCUE PROCEEDINGS PROCESS

The purpose of the Companies Act amongst others in terms Section 7(k) Business Rescue is to provide an efficient rescue and recovery of financial distressed companies thus, balancing the interests and rights of all stakeholders as opposed to Judicial Management which was primarily protecting the shareholders.

Therefore, Business Rescue is not a haven for the hopeless financially distressed companies rather a refuge for businesses that have prospects of survival alternatively for stakeholders getting better returns than in liquidation.

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Resolution must be adopted by the board that the company needs supervision -

- (i) Company is financially distressed
- (ii) Reasonable prospects of rescuing the company

Within 5 days of the resolution by the Board, the following must happen

- (i) File resolution with the Commission
- (ii) Publish a notice of resolution
- (iii) Appoint a business rescue practitioner

Within 2 days after the appointment

- (i) File notice of appointment
- (ii) Publish copy of notice of appointment

NB: File “deliver a document to the Commission in the manner and form, if any, prescribed for that document.”

Failure to comply with the above results in nullity. Panamo Properties SCA clarified the issue that nullity is not automatic.

Section 131 proceedings



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An affected person may apply to court to begin the proceedings

- (i) Company is financially distressed
- (ii) There are reasonable prospects of rescuing the company

If the court make an order to place the company under supervision, it may make a further order to appointing an interim practitioner to be ratified later. Then the court order with the necessary forms must be filed with the Commission to record the proceedings and the interim practitioner

Conditions to sections 129 & 131



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- If a company that has adopted a resolution to voluntarily place the company under supervision may not adopt a resolution to begin liquidation proceedings unless the resolution has lapsed or as a way of terminating the proceedings.
- If a company has been placed in business rescue by the court, the company may not make a further resolution to place it in liquidation unless the court:
 - (i) Sets aside the resolution or order that began those proceedings
 - (ii) Has converted the proceedings to liquidation proceedings
- The Business Rescue Practitioner has to file with the Commission a notice of termination of the proceedings.

Case law

- Zizwe Open Cast Mining (Pty) Ltd v Lethabo Minerals (Pty) Ltd case no 2026 -104756
- Northwest Division of the High Court
- The Applicant (“Zizwe”) instituted compulsory business rescue by invoking Section 131.
- Before the completion of Section 131, the Responded (“Lethabo”) approaches the Commission and files voluntary business rescue proceedings.
- The court set aside the voluntary business rescue proceedings as it was not confirmed by the Commission.
- The court made it clear that the abuse of business rescue processes will not be tolerated
- The court did mention that such a conduct warranted punitive costs

Questions and Answers



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